

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP/(954) 797-1101

SUBJECT: Quasi Judicial Hearing: Variance
V 8-1-01 Robert L. and Helen L. Cummings
15380 SW 26 Street/Generally located on the southeast corner of Shot
Gun Road (SW 154 Avenue) and SW 26 Street

TITLE OF AGENDA ITEM:

V 8-1-01, Robert L. and Helen L. Cummings, 15380 SW 26 Street (A-1)

REPORT IN BRIEF: As a result of the construction of a sidewalk by the Town of Davie along Shot Gun Road (SW 154 Avenue) and in compliance with the terms of the settlement agreement between the Town of Davie and Mr. and Mrs. Cummings, there are several variances which are required in order to allow for the construction of a residential unit on Lot 1 of the "CCC Ranches" Plat. The requested variances are necessary for the reasonable use of the land and are in compliance with the terms of the settlement agreement entered into by the applicant and the Town of Davie (See Exhibit "A" and "B").

PREVIOUS ACTIONS: None

CONCURRENCES: The Planning and Zoning Board recommended approval of the request at its 10/24/01 meeting. (Motion carried 4-0, Chair Stahl was absent)

FISCAL IMPACT: None

RECOMMENDATION(S): Motion to approve

Attachment(s): Exhibit "A": Settlement Agreement, Exhibit "B": Variance Application, Justification Letter, Land Use Map, Subject Site Map, Aerial.

TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation

APPLICANT INFORMATION

Owner:	Agent:
Name: Robert L. and Helen L Cummings	Name: Daniel A Fee, PE., CDI Eng.
Address: 1314 SW 47 Terrace	Address: 320 W. Davie Boulevard
City: Ft. Lauderdale, FL. 33317	City: Ft. Lauderdale, FL. 33315
Phone: (954)587-1840	Phone: (954)524-9800

BACKGROUND INFORMATION

Date of Notification: October 3, 2001 **Number of Notifications:** 27

Application History: No deferrals have been requested.

Application Request: See attached Exhibit "B"

Address/Location: 15380 SW 26th Street/Generally located on the southeast corner of Shot Gun Road (SW 154th Avenue) and SW 26th Street.

Future Land Use Plan Designation: Residential (1DU/AC)

Zoning: A-1, Single Family Residential-Agricultural District

Existing Use: Vacant

Proposed Use: Single Family Residential

Parcel Size: 0.730 acres (31,813 square feet)

	<u>Surrounding Uses:</u>	<u>Surrounding Land Use Plan Designation:</u>
North:	Residential	Residential (1 DU/AC)
South:	The Romano Plat (Residential)	Residential (1 DU/AC)
East:	CCC Ranches (Agricultural)	Residential (1 DU/AC)
West:	D&M Acres (Residential)	Residential (1 DU/AC)

Surrounding Zoning:

North: R-1, Residential District

South: A-1, Agricultural District
East: A-1, Agricultural District
West: R-1, Residential District

ZONING HISTORY

Related Zoning History: None

Previous Request on same property: None

APPLICATION DETAILS

As a result of the construction of a sidewalk by the Town of Davie along Shot Gun Road (SW 154th Avenue) and in compliance with the terms of the settlement agreement between the Town of Davie and Mr. and Mrs. Cummings, there are several variances which are required in order to allow for the construction of a residential unit on Lot 1 of the “CCC Ranches “ Plat.

Applicable Codes and Ordinances

1. Section 12-309 of the Land Development Code, review for variances.
 2. Section 12-81 (table 12-81 A): Requires that the minimum lot area for a conventional single family unit in the A-1 zoning district be 35,000 square feet of net dry land. The platted lot size for Lot 1 of the “CCC Ranches Plat” was 39,081 square feet at the time of platting. Subsequent to the Plat, the Town of Davie constructed a sidewalk on a portion of Lot 1. Per the terms of the settlement agreement, the property owner will quit-claim that portion of Lot 1, and the existing lot size will be 31,813 square feet. As a result:
 - a) A variance is being sought to allow the construction of a single family unit on a lot which is less than the minimum required lot size, reduction **FROM:** 125 feet **TO:** 101.8 feet;
 - b) A variance is being sought to reduce the minimum side yard requirement **FROM:** 25 feet **TO:** 10 feet, in order to maintain the same net buildable lot width;
 - c) A variance is being sought to waive the requirement for an underground sprinkler system on a single family lot of less than 35,000 square foot; and
 - d) A variance is being sought to waive the requirements of section 12-107 (A) for the required landscape buffer and street trees for single family districts adjacent to public rights-of-way.
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Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. Planning Area 2 includes the westernmost section of the Town north of Orange Drive and south of SW 14

Street, and bound on the west by Interstate 75 and on the east by SW 100 Avenue. The predominant existing and planned land use is single family residential at a density of one dwelling per acre.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 113.

Applicable Goals, Objectives & Policies: Policy 17-6: Land Development regulations shall address incompatible land uses through requirements such as buffering and setbacks.

Policy 17-7: Adopted land development regulations shall continue to set forth setbacks or separation regulations, landscaping requirements, and minimum open space criteria to enhance living and working environments.

Staff Analysis

The requested variances are a direct result of the Town's construction of a sidewalk along the Shot Gun (SW 154th Avenue) and in compliance with the terms of the settlement agreement entered into by the applicant and the Town of Davie (See Exhibit "A").

Findings of Fact

Variances:

(a) There are a special circumstances or conditions applying to the land for which the variance is sought, which circumstance or condition is peculiar to such land and its location, and does not apply generally to land or other lots in the same district, and that said circumstance or condition is such that the strict application of the provisions of this chapter would deprive the the reasonable use of this lot for which the variances are sought. The alleged hardship is not self-created by the owner in this case.

(b) The granting of the variances are necessary for the reasonable use of the land and that the variances as requested are the minimum variances that will accomplish this purpose.

(c) Granting of the requested variances are in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff Recommendation

Recommendation: Based upon the above analysis and the findings of facts, staff recommends approval of petition V 8-1-01.

Planning & Zoning Board Recommendation

The Planning and Zoning Board recommended approval of the subject plat at its 10/24/01 meeting. (Motion carried 4-0, Chair Stahl was absent)

Exhibits

1-EXHIBIT “A” : SETTLEMENT AGREEMENT

2-EXHIBIT “B” : VARIANCE APPLICATION JUSTIFICATION LETTER

- 3. Land use map
- 3. Subject site map
- 4. Aerial

Prepared by: _____

Reviewed by: _____

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO. 99-018794 CACE (14)

ROBERT L. CUMMINGS and
HELEN L. CUMMINGS,

Plaintiffs,

vs.

TOWN OF DAVIE, FLORIDA, a
municipal corporation,

Defendant.

Settlement Agreement

Plaintiffs, Robert L. Cummings and Helen L. Cummings, and Defendant, Town of Davie, Florida, have reached the following conditional Settlement Agreement:

1. In settlement of this matter the Town of Davie will pay:
 - A. Robert L. Cummings and Helen L. Cummings the sum of \$32,000 in full settlement of Plaintiffs' claims for full compensation from Defendant for a taking of a portion of Lot 1 of CCC Ranches plat, excluding Plaintiff's attorneys' fees, expert fees and costs.
 - B. Plaintiffs' law firm, Brigham, Moore LLP, the sum of \$15,000 for Plaintiffs' attorneys' fees and costs.
 - C. Reimburse Plaintiffs for any expert fees incurred by them which relate to

Plaintiffs' applications for variances (which are discussed hereafter in this Agreement), with said costs not to exceed \$5,000.

- D. Defendant will reimburse Plaintiffs for the costs associated with the preparation of the legal description of the area to be conveyed by Plaintiffs to Defendant, and a legal description of Plaintiffs' remaining portion of Lot

1.

2. Plaintiffs will convey to Town of Davie by Quit Claim Deed the area of the real property west from the easterly boundary of the sidewalk of Lot 1. The Plaintiffs warrant that they are the title owners of said property (except for any claims by the Town of Davie) and that there are no liens, mortgages or encumbrances on that portion of the property conveyed.

3. Because the Plaintiffs need to have the assurance that Lot 1 can be developed as a single family residence, and because there must be a variance(s) for this assurance to occur, and because this variance(s) cannot be granted in an Agreement, but must go through the variance process and meet the criteria of a variance, it is agreed that:

- A. Within two (2) months of the execution of this settlement agreement, Plaintiffs will apply for all reasonable variances necessary for a single family residential development of Lot 1 from the Town of Davie for a variance which will be for variance lot size, and may be for lot width,

building pad size, and setbacks and other variances in order to accomplish the ability of Lot 1 to be utilized for development of a single family residence. There shall not be any administrative cost or filing fees for the variance process to Plaintiffs (there shall not be any expense or costs or fees charged by the Town of Davie to Plaintiffs for the variance process).

- B. The Town of Davie will make a determination regarding Plaintiffs' variance application within three (3) months of the Plaintiffs' filing for the variances.
- C. If the Town of Davie grants Plaintiffs' variance applications, then the variances will be incorporated by reference into a Final Judgment, and the Final Judgment will provide that the variances are permanent to the remainder of Lot 1 of the CCC Ranches Plat (that is Lot-1, less the portion given to the Town of Davie under this Settlement Agreement). In addition, the Final Judgment will provide that the property will be permitted, in perpetuity, to be developed with a single family residence. This obligation will run with the land and will be binding upon the Town of Davie, regardless as to when the property is ultimately developed or as to who ultimately develops the property.
- D. If the Town of Davie grants Plaintiffs' variance applications, counsel for Plaintiffs and Defendant will jointly submit to the Court for signature a

mutually approved Stipulated Final Judgment in this matter as soon as practical after the approval.

- E. If Plaintiffs are not granted all necessary variances for the development of Lot 1 as a single family residence within three (3) months after Plaintiffs' variance applications, this settlement agreement shall be voidable by Plaintiffs, but not by Defendant. In order to void the settlement agreement, Plaintiffs must give Defendant's counsel written notice of its election to void the settlement agreement within thirty (30) days after Davie's denial of Plaintiffs' variance applications.
4. Within thirty (30) days of the entry of a Stipulated Final Judgment, Defendant will pay to Plaintiffs the sums indicated in paragraph 1 above, and within said time period, the Plaintiffs' will convey to Defendant title to the portion of Lot 1 as indicated in paragraph 2 of this Agreement.
 5. This settlement agreement is subject to Plaintiffs' approval of the language of the final judgment (which approval must be reasonable, and the language of the Final Judgment must be consistent with this Settlement Agreement, without adding terms and/or conditions).
 6. Because of the time period necessary as a result of the unavoidable condition concerning the variance, the parties agree that, through their respective attorneys, that they will request that the Court continue this matter until there has been an

opportunity for this matter to go through the variance process.

Robert L. Cummings
Robert L. Cummings

Helen L. Cummings
Helen L. Cummings

Town of Davie

BRIGHAM MOORE, LLP
Attorneys for Plaintiffs
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Miami, Florida 33130
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By: LAURA N. CAMP
LAURA N. CAMP
Florida Bar No: 0048290
Dated: 02/19/01

MONROE D. KIAR
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6191 S.W. 45th Street
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Davie, Florida 33314
Telephone: (954) 484-9770
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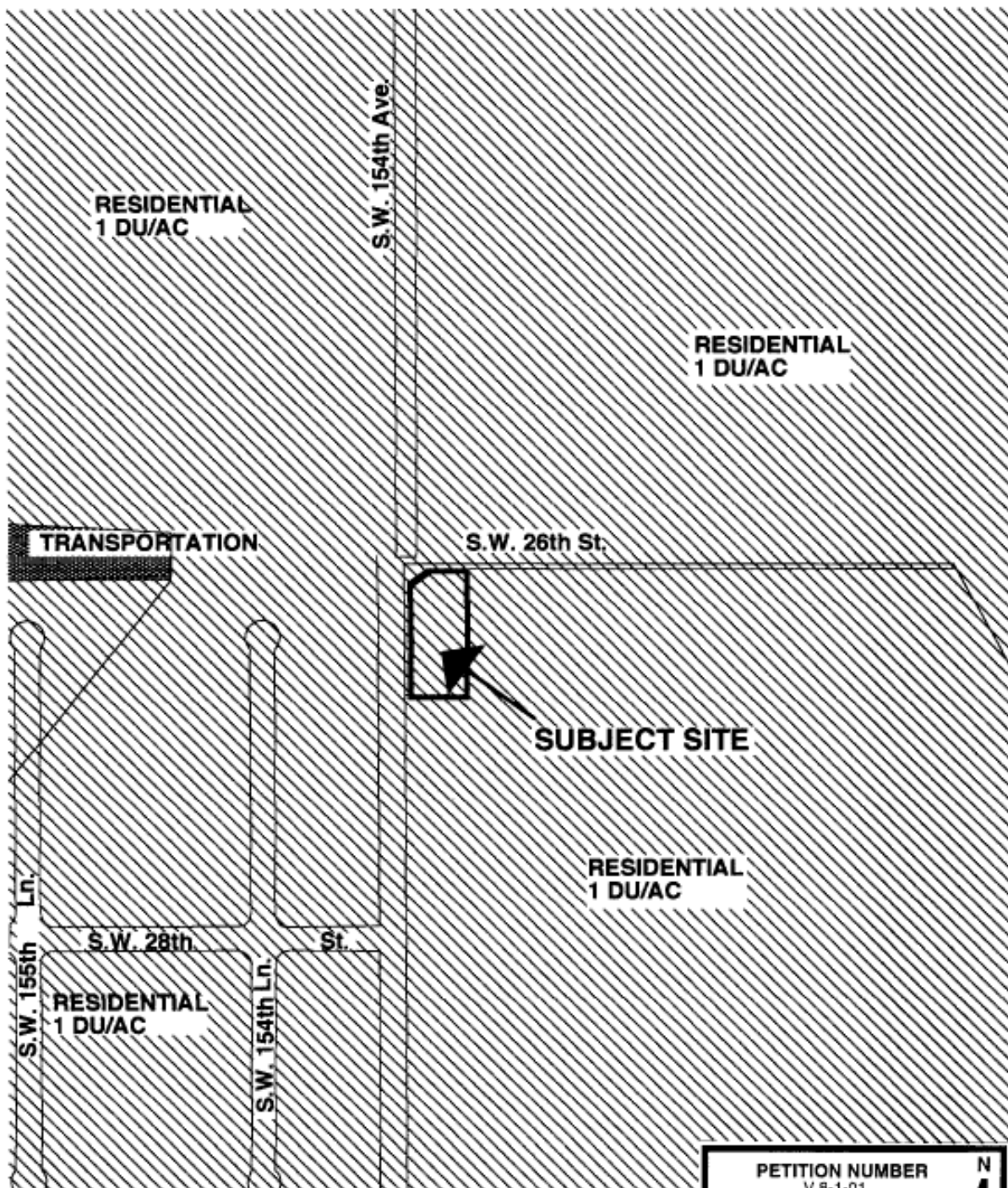
By: MONROE D. KIAR
MONROE D. KIAR
Florida Bar No: 177320
Dated: _____

**VARIANCE APPLICATION
EXHIBIT 'B'**

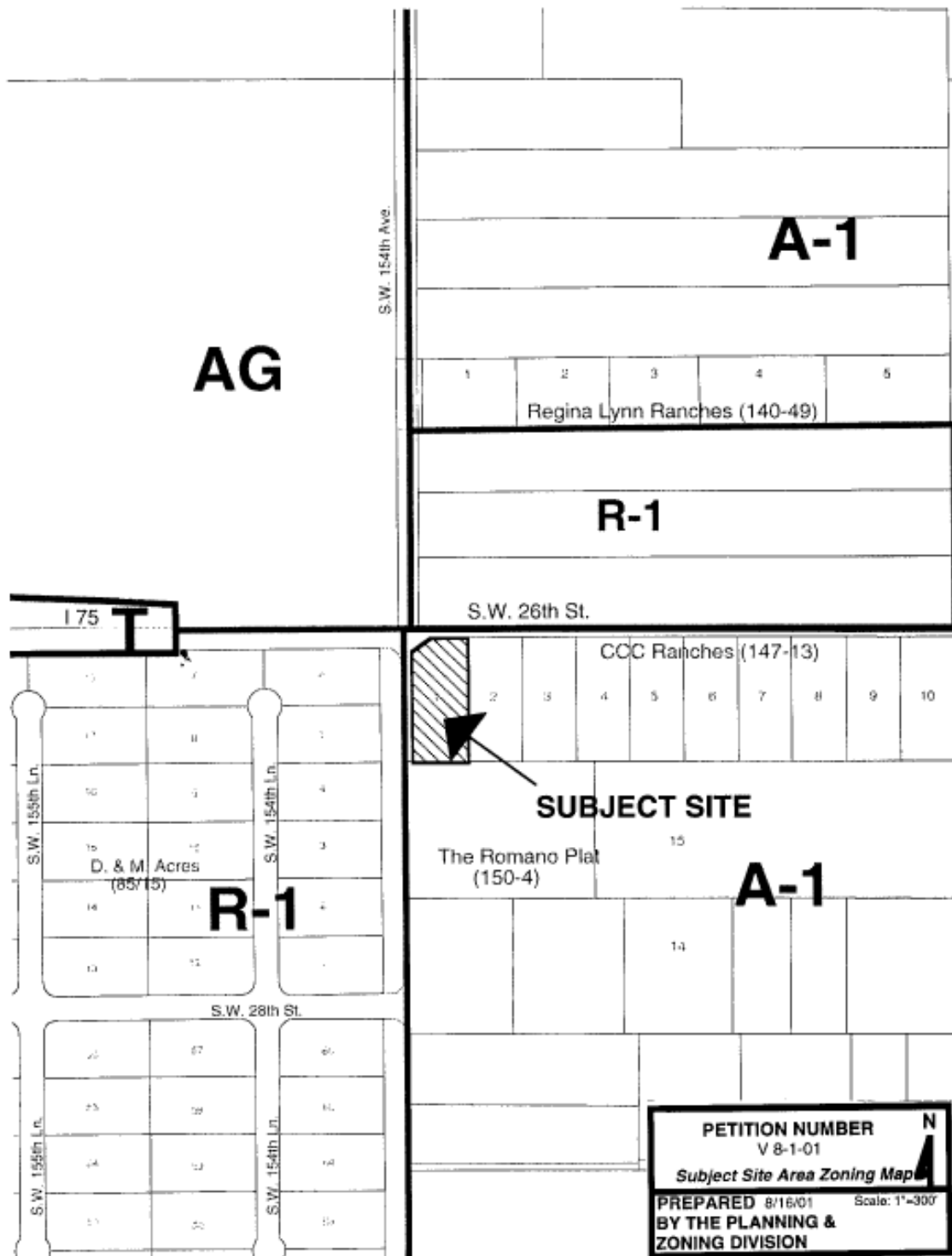
As a result of the construction of a sidewalk by the Town of Davie along Shot Gun Road (SW 154th Avenue) and in compliance with the terms of the settlement agreement between the Town and Mr. and Mrs. Cummings, there are several variances which are required in order to allow for the construction of a residential unit on Lot 1 of the "CCC Ranches" Plat.

The following are the variances required from the Town of Davie:

1. Section 12-81: (Table 12-81A): Requires that the minimum lot area for a conventional single family unit in the A-1 zoning district be 35,000 SF. The platted lot size for Lot 1 of the "CCC Ranches" Plat was 39,081 SF at the time of platting. Subsequent to the Plat, the Town of Davie constructed a sidewalk on a portion of Lot 1. Per the terms of the settlement agreement, the property owner will quit claim that portion of Lot 1 which lies west of the easterly boundary of the sidewalk. Subsequent to the deeding of this portion of Lot 1, the remainder lot size will be 31,813 SF. Therefore, a variance is being sought to allow the construction of a single family unit on a lot which is less than the minimum required lot size.
2. Section 12-81 (Table 12-81A): Requires that the minimum lot frontage for a conventional single family unit in the A-1 zoning district be 125 feet. The platted lot width for Lot 1 of the "CCC Ranches" Plat was 129.9 feet. Per the terms of the settlement agreement, the property owner will quit claim a portion of Lot 1 to the Town of Davie, which will result in the width of Lot 1 being reduced to 101.8 feet. Therefore, a variance is being sought to allow the construction of a single family unit on a lot which has less than the minimum lot frontage.
3. Section 12-81 (Table 12-81A): Requires that the minimum side yard for a conventional single family unit in the A-1 zoning district be 25 feet. With a platted lot width of 129.9 feet, the property had a net buildable lot width of 79.9 feet (129.5 total width minus 25 feet for each side yard). Upon quit claiming a portion of Lot 1 to the Town per the terms of settlement agreement, the lot width will be reduced to 101.8 feet. If the 25 foot minimum yard width is applied to the reduced lot width, the net buildable lot width would be reduced to 51.8 feet. Therefore, a variance is being sought to reduce the minimum 25 foot side yard requirement to a 10 foot side yard requirement, in order to maintain the same net buildable lot width.
4. Section 12-105 (B): Requires that an automatic underground sprinkler system be provided, except for single family lots of 35,000 SF or greater where an underground sprinkler system shall not be required. The platted lot size for Lot 1 of the "CCC Ranches" Plat was 39,081 SF, and therefore is not subject to this requirement. Subsequent to quit claiming a portion of Lot 1 to the Town per the terms of the settlement agreement, the lot size would be reduced to 31,813 SF, which would then subject the lot to the requirement for providing an underground sprinkler system. Therefore, a variance is being sought to waive the requirement for an underground sprinkler system. On a single family lot of less than 35,000 SF.
5. Section 12-107 (A)(5): Requires a landscape buffer and street trees for single family districts adjacent to public rights-of-way. The required buffer width adjacent to an aerial or collector street is 20' wide, and 10' wide adjacent to all other streets. In addition, section 12-107 (A) (5)g states that the required landscape buffer shall not be contained in any lot and shall be in addition to any recreational trail requirements. There was not a landscape buffer easement required by the Town on the "CCC Ranches" Plat. However there is a 10' bridle path located along the front of Lot 1 adjacent to S.W. 26th Street. The application of this code section by the Town of Davie at the time of a building permit on Lot 1, would further reduce the size of the remainder lot and effectively negate the variances being sought for lot size, lot width and side yard width. Therefore, a variance is being sought to waive the requirements of section 12-107 (A) for the required landscape buffer and street trees for single family districts adjacent to public rights-of-way.



PETITION NUMBER		N
V 8-1-01		4
Subject Site Area		
Future Land Use Plan		
PREPARED 8/16/01		Scale: 1"=300'
BY THE PLANNING & ZONING DIVISION		





N
↑
DATE FLOWN
JANUARY 1998
SCALE: nts
V 8-1-01